

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2555

IN THE MATTER OF:

Served May 18, 1984

Application of AIRPORT LIMO, INC.,)
to Transfer Certificate of Public)
Convenience and Necessity No. 26,)
in Part, to THE AIRPORT)
CONNECTION, INC.)

Case No. AP-84-22

By application filed May 4, 1984, Airport Limo, Inc., seeks approval to transfer certain portions of its WMATC Certificate of Public Convenience and Necessity No. 26 to The Airport Connection, Inc. ("TAC"). The portions of Certificate No. 26 to be transferred authorize the following operations:

SPECIAL OPERATIONS

- A. Transporting passengers and their baggage, in the same vehicle with passengers, between Washington National Airport, Gravelly Point, Va., and Dulles International Airport, Herndon, Va., on the one hand, and on the other, the Capitol Hilton Hotel, the Washington Hotel, the Sheraton Washington Hotel, the Shoreham Hotel and the Mayflower Hotel, all located in the District of Columbia, and points in those parts of Maryland and Virginia located in the Metropolitan District.

RESTRICTED against transportation solely between points in Virginia.

- B. Transporting passengers and their baggage, in the same vehicle with passengers, between Washington National Airport, Gravelly Point, Va., on the one hand, and, on the other, the Quality Inn-Capitol Hill and Hyatt Regency Hotel, located in the District of Columbia.

Submitted with the application is a copy of an agreement 1/ executed on April 24, 1984, by and between the transferor and Airport

1/ It appears that the obligations and benefits of ABC, under its agreement with Airport Limo, are flowing to TAC, which is ABC's wholly-owned subsidiary but still a separate legal entity. Perhaps some enabling agreement, not a part of this record, has been reached among the parties. We shall require that the record be supplemented on this point.

Baggage Carriers, Inc. ("ABC"), the parent company which owns 100 percent of the stock of the transferee. The said agreement indicates that ABC has succeeded the transferor as the contractor selected by the Federal Aviation Administration ("FAA") to provide ground transportation to Washington National and Dulles International Airports effective May 1, 1984.

Under the agreement, ABC is required:

- (a) to place the sum of \$28,616.38 in escrow by May 1, 1984;
- (b) to join with the transferor in filing the instant transfer application and a similar application before the Virginia State Corporation Commission pertaining to the transfer of certain Virginia intrastate operating rights; and
- (c) to apply to this Commission and the Virginia State Corporation Commission for authority to conduct charter operations to and from the airports named above.

In regard to the last requirement, we note that the transferee, ABC's wholly-owned subsidiary, was granted temporary authority allowing special and charter operations to and from the involved airports by Order No. 2544, served April 10, 1984. Corresponding permanent authority applications have been filed by the transferee (TAC) in Case Nos. AP-84-17 and AP-84-18, and were set for hearing on May 17, 1984, by Order No. 2543, served April 3, 1984.

The transferor's obligations under the agreement are:

- (a) to transfer the operating rights involved here to ABC and to refrain from protesting the applications required to be filed by ABC;
- (b) to share the cost of any legal fees and expenses incurred as a result of any protests filed against such applications; and
- (c) to support such applications to the extent of intervening therein and presenting evidence on ABC's behalf if requested to do so.

The money held in escrow under the agreement is to be paid over to the transferor upon approval, withdrawal, or denial for lack of fitness of the transfer applications to be filed by ABC, or, alternatively, upon the granting of authority to ABC independent of the transfer applications.

The agreement is acknowledged by the FAA as satisfactory performance by the transferor of its obligations under a separate

contract with the FAA. We take official notice from our records in Case No. AP-80-16 that, under the ground transportation contract awarded to the transferor by the FAA in 1980, the transferor obligated itself to transfer the operating rights involved herein to the entity succeeding it as the FAA's designated ground transportation contractor serving the Washington metropolitan airports. As previously indicated, that successor entity is ABC, which controls the transferee.

The application indicates that current financial information regarding the transferee is on file with the Commission. A review of the Commission's records shows that in none of the five applications previously filed by the transferee 2/ is there any financial data concerning its operations. The transferee was incorporated in February, 1984, and had conducted no business as of the time its previous applications were filed. Those applications contain financial information concerning ABC, the transferee's parent, and indicate that ABC will guarantee the transferee's obligations.

Title II, Article XII, Section 12(b) of the Compact governs transfer applications such as the one at issue herein. It provides that:

If, after hearing held upon reasonable notice, the Commission finds that, subject to such terms, conditions, and modifications as it shall find to be necessary, the proposed transaction is consistent with the public interest, it shall enter an appropriate order approving and authorizing such transaction as so conditioned.

In determining the public interest, the Commission considers, among other factors, the fitness of the acquiring carrier, the benefits and cost of the transaction to the riding public, the fairness of the purchase price and the resulting competitive balance of the industry. The transferee bears the the burden of proof on all these issues.

We note that the transferee recently began conducting operations under three separate grants of authority. Since financial information respecting the transferee has not been previously submitted, we will require the transferee to submit a balance sheet and income statement reflecting the results of operations recently started,

2/ The Airport Connection, Inc., and ABC have filed the following applications: AP-84-10 (regular route, temporary authority), filed March 6, 1984; AP-84-14 (charter operations, temporary authority) and AP-84-15 (special operations, temporary authority), both filed March 21, 1984; and AP-84-17 (charter operations, permanent) and AP-84-18 (special operations, permanent), both filed March 27, 1984.

and to submit a comprehensive projection of revenue and revenue deductions for a 12-month period giving effect to the proposed transaction. The transferee must be prepared to present evidence (by means of a guarantee from ABC or otherwise) that it can meet its financial obligations.

We also note that the operating rights sought to be transferred are duplicated by the special operations authority the transferee seeks in Case No. 84-15, presently pending. It is our established policy to preclude grants of duplicative authority to a single carrier. Should transferee's application in Case No. AP-84-15 be granted to such an extent as to duplicate the operating rights sought to be transferred, the instant application to that extent will be subject to dismissal or other appropriate administrative disposition as the circumstances may warrant.

THEREFORE, IT IS ORDERED:

1. That this application is hereby scheduled for public hearing on June 26, 1984, at 9:30 a.m., in the Hearing Room of the Commission, Room 314, 1625 I Street, N.W., Washington, D.C. 20006.

2. That Airport Limo, Inc., is hereby made a coapplicant and a party to this proceeding.

3. That The Airport Connection, Inc., is hereby directed to publish once, in a newspaper of general circulation in the Metropolitan District, notice of this application and hearing in the form prescribed by the staff of the Commission no later than May 25, 1984, to produce at the hearing an affidavit of publication, and to post a copy of such notice conspicuously and continuously in each of its vehicles through the date of public hearing.

4. That any person desiring to protest shall file a protest in accordance with Commission Rule No. 14, or any person desiring to be heard shall so notify the Commission, in writing, no later than June 12, 1984, and simultaneously serve copies of said protest or notice on counsel for Airport Limo, Inc., Lawrence D. Levien, Esquire, 1333 New Hampshire Avenue, N.W., Suite 400, Washington, D.C. 20036, and on counsel for The Airport Connection, Inc., Jere W. Glover, Esquire, 1725 K Street, N.W., Suite 308, Washington, D.C. 20006.

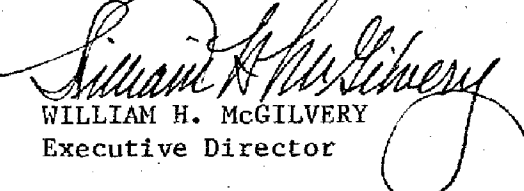
5. That The Airport Connection, Inc., is hereby directed to file with the Commission no later than June 19, 1984, five (5) copies each of its current balance sheet and income statement and a statement projecting revenue and revenue deductions for a 12-month period, giving effect to the proposed transaction, produce the originals thereof at the public hearing, and serve a copy thereof on each party of record as of June 12, 1984.

6. That the parties shall document the agreement enabling The Airport Connection, Inc., to fulfill the agreement between Airport Baggage Carriers, Inc., and Airport Limo, Inc., and that five copies of such documentation shall be filed with the Commission and one copy served on each protestant, not later than June 19, 1984.

7. That The Airport Connection, Inc., is hereby assessed \$400 pursuant to Title II, Article XII, Section 19 of the Compact and directed to deliver said amount to the office of the Commission, Suite 316, 1625 I Street, N.W., Washington, D.C. 20006, no later than the close of business on June 19, 1984.

8. That Airport Limo, Inc., is hereby required to file with the Commission, not later than June 19, 1984, six copies of its proposed WMATC Tariff No. 15, eliminating rates, charges and regulations pertaining to the operating rights herein sought to be transferred.

FOR THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director